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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Inquiry concerning Spain carried out by the Committee under article 6 of the Optional Protocol to the Convention

Report of the Committee*, **

* Adopted by the Committee at its eighteenth session (14–31 August 2017).

** At its eighteenth session, the Committee decided to make this report public upon expiry of the six-month period provided for in article 6 (4) of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

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I. Establishment of the inquiry

1. The present inquiry examines alleged grave or systematic violations of article 24 of the Convention (on the right to education) by the State party — i.e. the alleged structural exclusion and segregation of persons with disabilities from the mainstream education system on the basis of disability — during the period from 2011, the year in which the State party's initial report was examined, up to the date on which the present report was adopted.

2. In September 2014, the Committee received information from an organization of persons with disabilities[1] alleging that grave and systematic violations of article 24 of the Convention were being committed and requesting that the Committee conduct an inquiry into the matter. In January 2015, the Committee's Working Group on Communications and Inquiries found the information reliable and indicative of possible grave or systematic violations of the right to education and decided to register the request. Pursuant to article 6 (1) of the Optional Protocol and rule 83 (1) of the Committee's rules of procedure, the Committee, meeting in plenary at its fourteenth session, decided to submit the information received to the State party and invite the State party to cooperate in the examination of the information and to submit its observations by 1 November 2015. The State party submitted its observations on 13 November 2015.

3. At its fifteenth session, the Committee, acting in accordance with article 6 (2) of the Optional Protocol and rule 84 (1) of the rules of procedure, considered the observations submitted by the State party and additional information received from other sources, established an inquiry into the alleged violations and appointed three of its members as rapporteurs. On 24 May 2016, the Committee received a request from one of the entities making up the independent monitoring mechanism set up in accordance with article 33 (2) of the Convention,[2] asking for an inquiry into alleged violations of the right to education of persons with disabilities. As the information had already been analysed by the Committee, and in view of the reliability of the source, the Committee decided to incorporate this request into the ongoing inquiry. The Committee informed the State party of the above decisions on 30 June 2016.

II. International human rights standards

4. The Convention does not establish new rights for persons with disabilities but instead explicitly clarifies for the first time that the right to education is the right to an inclusive and quality education, thus completing a process of normative development that began in various international human rights instruments. The right to education is provided for in article 26 of the Universal Declaration of Human Rights, which states that everyone has the right to education. Article 13 of the International Covenant on Economic, Social and Cultural Rights reaffirms the above, adding that education should enable all persons to participate effectively in a free society and promote understanding and tolerance. The right of children with disabilities to have effective access to education and training with a view to achieving their social integration and individual development is enshrined in article 23 of the Convention on the Rights of the Child. Article 28 of that Convention lays down a child's right to education, a right that is to be achieved on the basis of equal opportunity, while article 29 stipulates that a child's education shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

5. Article 24 of the Convention on the Rights of Persons with Disabilities states that persons with disabilities have a right to education and that, as a correlation of this, States parties have an obligation to respect, protect and ensure an inclusive and quality education for all persons without distinction. Under paragraph 1 of the same article, States parties must guarantee the right to education for persons with disabilities through an education

[1] SOLCOM, an association for community solidarity and social inclusion of persons with functional diversity.

[2] Spanish Committee of Representatives of Persons with Disabilities.

system that is inclusive at all levels, including preschool and tertiary education, vocational training and lifelong learning, and extracurricular and social activities. According to its general comment No. 4 (2016) on the right to inclusive education, the Committee considers the right to education to be the right of all persons to learn in an education system that takes account of the needs of all persons, including those with disabilities, and in which all students are accepted by all schools regardless of their physical, intellectual, social, linguistic or other abilities. This involves not only providing a quality education but also changing discriminatory attitudes and systems in order to create inclusive societies in which the differences and dignity of all persons are equally respected and valued. In inclusive education, diversity is valued because it enriches the teaching and learning process and promotes human development. The necessary support and accommodation must be guaranteed if the diverse educational needs of students are to be met, thereby enabling them to develop their personality, talents and capacities to their fullest potential. Pursuant to article 24 (2) (a) of the Convention, persons with disabilities should not be excluded from the general education system on the basis of disability.

6. Article 4 of the Convention sets forth the general obligations of States parties, which must ensure that all State entities — including autonomous regional governments to which certain powers have been transferred — implement the Convention. States parties undertake to "ensure that public authorities and institutions act in conformity with" the Convention (art. 4 (1) (d)). While States parties may delegate tasks or the provision of services to third parties, they must "take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise" (art. 4 (1) (e)). Outsourcing and decentralization do not in any way lessen States parties' responsibility to "ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability" (art. 4 (1)).

7. The Committee recalls that denial of reasonable accommodation constitutes discrimination, pursuant to article 2 of the Convention and the Committee's general comments No. 2 (2014) on accessibility and No. 4 (2016). States parties have an immediate obligation to provide reasonable accommodation from the time it is required by a person with disabilities in a given situation — such as at school — in order for that person to enjoy his or her rights on an equal basis with others. The aim of reasonable accommodation is to ensure non-discrimination. It is the State party's duty to determine whether such accommodation is proportionate or whether it constitutes an undue burden.

8. Article 4 (2) of the Convention recognizes that the realization of economic, social and cultural rights is to be achieved progressively and requires States parties to take measures to the maximum of their available resources, without prejudice to immediately applicable obligations such as the elimination of discrimination and inequalities in the enjoyment of economic, social and cultural rights.

III. Cooperation of the State party

9. Pursuant to article 6 of the Optional Protocol and rule 85 of the Committee's rules of procedure, the Committee sought the cooperation of the State party. The State party appointed the area head of the Human Rights Office of the Directorate-General for the United Nations and Human Rights at the Ministry of Foreign Affairs and Cooperation as the focal point. The Committee appreciates that its request to visit the country was granted by the State party and is grateful for the support it received throughout the procedure.

IV. Country visit

10. The country visit took place from 30 January to 10 February 2017. Two members of the Committee visited Madrid, León, Valladolid, Barcelona, Seville and Málaga.

11. The Committee members interviewed more than 165 people, including civil servants from the central Government and from the 17 Autonomous Communities (regional governments), as well as representatives of organizations of persons with disabilities and

other civil society organizations, researchers, academics, judges and lawyers. The Committee commends the efforts of all those interviewed to provide valuable and updated information.

V. Sources of information and confidentiality of the proceedings

12. Pursuant to rule 83 of its rules of procedure, the Committee gathered additional information from various sources. The Committee collected voluminous documentary evidence, much of which was already in the public domain, such as the annual reports of the mechanism that independently monitors implementation of the Convention and data from various government departments and units. The Committee also received confidential documents. Some of the documents gathered rely on surveys conducted by research institutes and academic sources.

13. According to article 6 (5) of the Optional Protocol, inquiry proceedings must be conducted confidentially. All persons who were contacted and invited to participate in the meetings and hearings during the country visit signed the solemn declaration provided for in rule 87 (3) of the Committee's rules of procedure.

VI. Contextual background to the inquiry

The Convention in the domestic legal system, decentralization and the independent monitoring mechanism

14. Under article 96 (1) of the Spanish Constitution, validly concluded international treaties, once officially published in Spain, are part of the domestic legal order. Furthermore, pursuant to article 10 (2) of the Constitution, the provisions relating to the fundamental rights and liberties recognized by the Constitution are to be construed in conformity with the international treaties and agreements thereon ratified by Spain, including the Convention, as it is a human rights treaty.

15. Under article 14 of the Constitution, "Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance", which tacitly includes disability. Article 27 of the Constitution recognizes that everyone has the right to education; this includes persons with disabilities.

16. Article 49 of the Constitution stipulates that "the public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of those with a physical, sensory or mental disability by giving them the specialized care they require, and affording them special protection for the enjoyment of the rights conferred by this Title on all citizens". In 2011, Act No. 26/2011 on the adaptation of legal norms to the Convention on the Rights of Persons with Disabilities was enacted. In 2013, all disability laws in force were consolidated in Royal Legislative Decree No. 1/2013 of 29 November 2013, approving the revised text of the General Act on the Rights and Social Inclusion of Persons with Disabilities.

17. According to the information provided by the State party, responsibility for education is shared between the central Government (Ministry of Education, Culture and Sport) and the Autonomous Communities (education councils or departments). The Ministry is also responsible for education in the Autonomous Cities of Ceuta and Melilla. The Ministry and the Autonomous Communities coordinate their work through institutional mechanisms such as the Education Sector Conference, which seek to achieve maximum consistency and integration within the education system. Representatives of the Ministry and those in charge of education in the Autonomous Communities meet periodically to hold discussions, consider draft regulations and adopt criteria for the distribution of subsidies for regional education programmes. The Conference and the committees established to consider various issues make it possible to jointly examine the problems encountered and determine ways to resolve them.

18. The membership of the General Commission on Education consists of a representative of each Autonomous Community with at least the rank of director-general and the Director-General for Regional Cooperation and Evaluation within the Ministry of Education, Culture and Sport, who chairs the Commission. The Commission facilitates active cooperation between the Autonomous Communities and the central Government and provides support to the Education Sector Conference. One of its main tasks is to coordinate the work of the Conference and the various committees, working groups and panels. Other forums for debate and cooperation in which experts and Government representatives take part include:

- The panel on special educational needs, with the participation of the Autonomous Communities, experts, various units of the Ministry of Education, Culture and Sport and other ministries, and the Spanish Committee of Representatives of Persons with Disabilities;
- The Autonomous Communities working group on special educational needs;
- The forum on education for persons with disabilities, an advisory collegiate body chaired by the Minister of Education and made up of representatives of the Ministry of Education, Culture and Sport, the Spanish Committee of Representatives of Persons with Disabilities, the State Council for Schools, the Education Sector Conference, the General Conference on University Policy, the Council of University Students and universities.

19. Each Autonomous Community has set up its own education authority. The Autonomous Communities also have various collegiate bodies whose functions are determined by the regulations in each Community. They include:

- Regional school councils: these are the highest consultative, advisory and participative bodies covering non-university education. The nature and sphere of competence of school councils varies from region to region;
- Regional vocational training councils: these councils plan, coordinate and evaluate vocational training within the education system;
- Regional councils for higher education in the arts: these are consultative and advisory bodies for the arts;
- University councils: these are consultative and cooperative bodies at university level.

20. The State alone has the authority to regulate the certification, issuance and recognition of academic and professional qualifications and the basic rules governing the implementation of article 27 of the Constitution, with a view to ensuring that the authorities fulfil their obligations in this regard.

21. Royal Decree No. 2176/2011 of 16 September 2011 established the Spanish Committee of Representatives of Persons with Disabilities as the independent mechanism for monitoring implementation of the Convention, as required under article 33 (2) of the Convention. The Spanish ombudsman is also part of the monitoring mechanism.

VII. Summary of the findings

22. The Committee considers that the information available reveals violations of the right to an inclusive and quality education. These violations are primarily related to certain features of the education system that have been maintained despite reforms and that continue to exclude persons with disabilities — particularly those with intellectual or psychosocial disabilities or multiple disabilities — from mainstream education on the basis of assessments conducted according to the medical model of disability. This, in turn, results in educational segregation and denial of the reasonable accommodation needed to ensure the non-discriminatory inclusion of those with disabilities in the mainstream education system. This segregation, which the Committee highlighted in its concluding observations on Spain in 2011, still affects around 20 per cent of persons with disabilities, with negative repercussions on their social inclusion.

23. The Committee took note of initiatives to move towards educational inclusion. These come in addition to existing mechanisms and practices but have not led to any major transformation in the education system. It appears that the difficulties pupils with disabilities encounter are resolved on an ad hoc basis. In most cases, the future of a student with disabilities depends on the will of his or her parents and that of the administrative, educational and inspection personnel involved, rather than on the realization of his or her right to an inclusive and quality education.

A. Main features of the legal framework governing the right to education in the State party

24. In Spain's domestic legislation, there is a combination of central Government legislation, which is enacted by the national parliament, and regional legislation, which is enacted by the parliamentary assemblies of each Autonomous Community. According to the information provided by the State party, at the central Government level, the Organic Act on Education (No. 2/2006) of 3 May 2006, as amended by the Organic Act on Improving the Quality of Education (No. 8/2013) of 9 December 2013, sets forth the legislative basis for education. The Organic Act on Improving the Quality of Education complements the provisions of the Organic Act on Education, which sets out the principles of the education system, including quality education for all pupils regardless of their conditions and circumstances, as well as equity, equal opportunities, educational inclusion and non-discrimination. The Organic Act on Improving the Quality of Education is supplemented by regulations on "assistance for pupils with special educational needs".

25. Although domestic legislation provides for inclusive education, it also contains provisions that permit exclusion on the basis of disability. Current legislation uses the same language as that used in legislation adopted in 1982. Article 23 (2) of the Act on Social Integration of the Handicapped (No. 13/1982) stipulated that "special education shall be provided temporarily or permanently to those handicapped persons who cannot be integrated into the ordinary education system". Article 18 (3) of the more recent Royal Legislative Decree No. 1/2013 of 29 November 2013 states that "such pupils [those requiring special assistance in their learning or with inclusive needs] shall be educated in special schools or substitute units only in exceptional cases where their needs cannot be met by applying the measures that allow for diversity in ordinary schools and taking account of the opinion of the parents or legal guardians".

26. Article 74 (1) of the Organic Act on Education stipulates that: "The schooling of pupils with special educational needs shall be governed by the principles of achievement of normality and inclusion and will ensure absence of discrimination and equality of access to and continuation in the education system. Measures to ensure flexibility at the various levels of education may be introduced if deemed necessary. Enrolment in special schools or units may continue up to the age of 21 years and shall be resorted to only when the needs of the pupil cannot be met by applying the measures that allow for diversity in ordinary schools." This article is retained in the Organic Act on Improving the Quality of Education, which covers the situation of children with disabilities in Title II (Equity in education).

27. The exception set out in article 74 (1) of the Organic Act on Improving the Quality of Education means that the current legislation is perpetuating discriminatory exclusion on the basis of disability. The Committee observed that in practice this legislation results in pupils with disabilities being excluded from the mainstream education system and separated from their immediate community in the majority of cases, because of the location of special schools. The Committee also observed that the legislative framework allows the mainstream and special education systems to coexist with different educational standards. As a result, pupils with disabilities can find themselves left by teachers and the administration in a setting that offers very poor or very few prospects for the pupil and for his or her performance. Exclusion includes segregation practices whereby pupils with disabilities are transferred to the special education system, where they are perceived as

"second-class" individuals with "few opportunities" who are excluded from the rest of society.[3]

28. The Organic Act on Improving the Quality of Education stipulates that the requirements of pupils with "specific learning difficulties" should be identified and assessed "as early as possible" (art. 79 bis). The Order of 18 March 2010 sets out the procedures for conducting psychological/educational assessments and the criteria for schooling "pupils with special educational needs", which are still based on the medical model of disability. In practice, it is found that the identification and assessment of the pupil's educational needs are still undertaken at the initiative of the professional involved. Pursuant to article 2 of the Organic Act on Improving the Quality of Education, duly qualified personnel must identify educational needs on the terms set by the education authorities. This broad concept has given rise to a range of different practices with regard to the profile of the professionals involved and the methods applied. There are no clear guidelines on how to conduct an assessment (including the type of assessment, the number of times the child has been observed, the context and the objectives). This disparity has serious consequences for the children concerned; generally speaking, it is very difficult to challenge the initial diagnosis or to have it reviewed. Where a review is carried out, there is no guarantee that it will be conducted in a thorough or objective manner at regular intervals. During the inquiry, various cases came to light in which the supposed review of the first diagnosis involved the initial conclusions being repeated word for word without the necessary time being taken to assess the child with the requisite attention to detail and objectivity.

29. Under article 74 (4) of the Organic Act on Improving the Quality of Education, responsibility for promoting the education of "children with special educational needs" lies with the education authority in each Autonomous Community. In article 71 (2), the Act also stipulates that "it is the education authorities' responsibility to ensure the necessary resources for ... pupils who require educational support other than the usual support". However, there are no guidelines on the implementation of these general principles. Each Autonomous Community can decide whether or not to produce its own legislative framework for the basic national law on education: some Autonomous Communities apply the Organic Act on Improving the Quality of Education, while others have drawn up their own legislation. Although some Autonomous Communities are working to update their educational decrees in 2017, with some now committed to inclusion, most of the decrees reflect the general principles of the Organic Act on Improving the Quality of Education and use the same language as articles 71 and 74 thereof. As a result, national legislation does not guarantee uniform interpretation and implementation in keeping with the obligations and rights set forth in the Convention.

30. Generally speaking, regional legislation sets out three options for promoting diversity. These are: (a) ordinary schools (in the Autonomous Community of Castilla and León, for instance, legislation refers to pupils "with special needs deriving from physical or hearing disabilities" but establishes specific mainstream schools to which they can be referred); (b) special schools; and (c) special units within ordinary schools offering a mixed education, with the aim not being inclusion but "more integration and social and educational inclusion". The Committee notes that the education system also provides for support and education at home and in hospital, which were not the subject of this inquiry.

31. In addition to these educational options for pupils with disabilities, the school system comprises: (a) State schools; (b) private schools; and (c) State-subsidized private schools. The latter receive public funds but have their own regulations.

32. There is also a diverse range of practices in terms of educational assessments. In some Autonomous Communities, the law has been amended to replace the standard exam at the end of compulsory secondary education with personalized assessments and reasonable accommodation. Others have maintained a single assessment system that does not take account of the pupil's capacities and needs.

[3] In the words of the persons interviewed in the course of the visit.

33. In terms of post-compulsory education, article 74 (5) of the Organic Act on Improving the Quality of Education states that education authorities must help "students with special educational needs" to continue their schooling in an appropriate form and must adjust the conditions in which the assessments set out in the Act are conducted. Very little attention is paid to this issue, as the vast majority of persons with disabilities have to drop out of school after completing their secondary education. The dropout rates for boys and, especially, girls with disabilities are higher than the national average.

34. The Committee observed that measures adopted in post-secondary teaching institutions are one-off and not systematic, and the post-secondary teaching system does not adequately accommodate persons with disabilities. A considerable number of persons with disabilities therefore decide to continue their post-compulsory education through distance learning in order to avoid the accessibility and inclusion problems encountered in physical universities. Figures from the National University of Distance Education, which combines online learning with classroom learning, show that 40 per cent of the university's students have a disability.

35. Against this background, in which responsibilities are shared between the central Government and the Autonomous Communities, the Committee notes that there are major disparities in the implementation of initiatives to promote inclusive education. These tend to be individual initiatives undertaken as part of the educational projects provided for in the Organic Act on Improving the Quality of Education. The results of these initiatives are rarely codified and barely sustainable.

36. National and regional legislation still contains provisions that are not in compliance with the Convention. The Committee notes that the State party did not take advantage of the legislative changes made after the dialogue with the Committee in 2011 to ensure such compliance.

B. The system of psychological/educational reports that precede the decision on schooling and determine that some persons with disabilities, particularly those with psychosocial or intellectual disabilities, are placed in a segregated education system, and the system of judicial and administrative remedies and appeals available for contesting that decision

37. There is a separate procedure for pupils with disabilities, who are subject to a psychological/educational assessment to determine their cognitive capacity. This assessment takes place at least at the ages of 6 and 12 years, when pupils start their compulsory primary and secondary education. A voluntary assessment may be carried out from the age of 3 years for children in the second cycle of preschool education. Following the assessment, a decision on the child's schooling is handed down. It summarizes the findings of the assessment and determines whether the child will be enrolled in a mainstream school, a special school or unit, or a combination of the two. Once the decision has been approved by the relevant education inspection authority, the school the child will attend and the resources to be made available are determined. In theory, the psychological/educational assessment and the decision on schooling are tools to ensure that the decision-making process is fair and to determine the reasonable accommodation that the pupil with disabilities requires. In practice, the system focuses on the pupil's failings and deficiencies, resulting in their being stigmatized as unfit for mainstream education. Instead of exploring all possible ways of including the pupil, the diagnosis prevents mainstream schools from providing support measures and reasonable accommodation.

38. The Committee noted that decisions on assessment techniques and arrangements are left to the professionals involved, resulting in very different practices in respect of evaluation and integration in school, based primarily on functional diagnoses that are incompatible with the Convention. The barriers in mainstream schools are not identified, and no suggestions are made as to how to eliminate them to accommodate the pupil.

39. The Committee noted the continued existence of processes that do not focus on all-round personal development. The recommendations of the assessment committee do not include measures relating to the development and adaptation of the curriculum so that the pupil can progress in the mainstream system. The Committee also notes that there is no assessment of the pupil's level of inclusion in terms of how they socialize with classmates during lunchtimes or extracurricular activities. Reasonable accommodation in terms of transport and other accessibility requirements are not always clearly defined. In most of the schools visited, separate transport to and from school was organized for pupils with disabilities, sometimes at different times. The reason given was that ordinary school buses could not accommodate the needs of the pupil with disabilities.

40. On the basis of these functional assessments, the education authorities usually decide to enrol children with disabilities in a special school, on the grounds that such schools have the necessary resources, regardless of how far away the school is from the pupil's home.

41. While current legislation allows parents to be involved in the schooling decision, in practice their views are ignored. The Committee observed that in several Autonomous Communities it is very difficult to get a decision overturned (one exception being the appraisals conducted by a group of experts in León, a new procedure that is far from widespread). When the parents do not agree with the decision, they have the right to lodge an appeal with an administrative court. This is a very drawn-out administrative procedure, and while the ruling is pending the pupil must attend the unit or school to which they were assigned. If they do not attend school, an education inspector may instigate proceedings against the parents for "neglect", as they have failed to send their child to school, something they are required by law to do until their child reaches the age of 16 years (Criminal Code, art. 226 et seq.). The Committee heard statements from parents who had been prosecuted and others who had been warned that their child would be sent to a special school if they tried to contest a decision to send the child to a special unit in a mainstream or mixed school.

42. If the administrative appeal is unsuccessful, parents can lodge a final judicial appeal and apply for interim measures to be put in place until the court hands down its decision. Support organizations have reported that there is a growing number of such cases.

43. The Committee notes that seeking justice in the courts is a long and costly struggle with no guarantee of success. The judicial rulings handed down still vary considerably, owing to the lack of sufficiently clear precedents. It is a long process: it can take at least three years to finally settle the matter, causing irreversible harm to children with disabilities and their families.

44. While legal aid does exist, parents usually pay the costs of the proceedings themselves. They often seek support from specialized organizations. However, these organizations lack resources and are not able to provide the necessary follow-up.

C. Characteristics, including type of disability, of persons, especially children, covered by existing laws and measures

45. The Committee observed that discriminatory exclusion, segregation and a lack of reasonable accommodation mainly affect persons with intellectual or psychosocial disabilities, autism spectrum disorders, attention deficit hyperactivity disorder, or multiple disabilities. These pupils usually attend special schools or programmes that separate them from their friends, and they have few opportunities to leave a system that segregates them from society.

46. In its written submission to the Committee, the Government indicated that 99.6 per cent of the total number of pupils nationwide were studying in mainstream schools, while the remaining 0.4 per cent were in "special schools with the ultimate goal of their being integrated into ordinary schools". However, the Committee observed that these figures conceal a pattern of cases showing an education system that continues to operate according to the segregated education model, which assumes that certain pupils with certain

disabilities can only be educated in segregated schools. Moreover, the statistics on students in mainstream schools cover students educated in special classrooms in such schools and those educated in a combination of special and mainstream facilities. The Committee saw cases of children with intellectual disabilities in special classrooms in mainstream schools who were segregated de facto, since they spent more time in the support unit or special classroom than in the ordinary classroom. This is illustrated in the statistics for Catalonia, where 88 per cent of pupils with disabilities reportedly spend all their time in a special school, 6 per cent spend more than half their time there and 4 per cent spend less than half their time there; whereas only 2 per cent spend all their time in a mainstream school. The Committee noted on numerous occasions that it had erroneously been assumed, including in official statistics, that educating students with disabilities in mainstream schools without the necessary reasonable accommodation constituted inclusive education.

47. Students with disabilities, particularly those with intellectual or psychosocial disabilities, who attend mainstream schools continue to be separated from their classmates, who view their presence in the classroom as an exception. The Committee observed that in the majority of cases where students with disabilities were taught in ordinary classrooms in ordinary schools, they were usually given work that was different from that given to the rest of the students and that was not necessarily related to the lesson, reinforcing their exclusion, denying their right to an inclusive and quality education, and denying all students the opportunity to learn about respect for difference and diversity. However, the Committee also visited mainstream schools that were running very encouraging programmes, although these were one-off or pilot programmes whose future was uncertain. The system of discriminatory exclusion is therefore being perpetuated, despite clear examples that show that the inclusion of persons with disabilities, including intellectual and psychosocial disabilities, is achievable.

48. The situation of persons with visual impairments requires a special mention. Persons who are members of the Spanish National Organization for the Blind (ONCE), a non-profit foundation, receive from the Organization the support they need in ordinary or private schools. ONCE provides specialized support in the form of teaching support for Braille, adaptation of materials, rehabilitation techniques, and student counselling outside school hours. The Committee observed, however, that teachers and other school staff had not received the necessary training in inclusive education and human rights to be able to work with outside experts and advisers to create inclusive learning environments that encourage collaborative work and eliminate barriers to inclusion. For instance, in one case, ONCE's recommendations to facilitate a student's learning were not implemented by the teaching staff of a mainstream school and were ignored by the administrative staff, who repeatedly removed the tactile markings on the student's desk and chair in order to be able to clean them.

D. Human, technical and financial resources in budgets at central and regional level devoted in recent years to the right to education of persons with disabilities, especially children

49. The Committee notes that the allocation of funds is determined at regional level, resulting in large disparities between the Autonomous Communities. The initial implementation of the Convention coincided with the economic crisis, and the financial resources for implementing inclusive education were reduced. The general trend observed is for funds to be focused on maintaining special units and centres. Neither the central Government nor the Autonomous Communities have conducted a budgetary exercise to identify in detail the resources that would be needed to effectively implement inclusive education. Nor has any research been carried out into the socioeconomic, political and cultural benefits of inclusive education, and there is no national policy or plan of action for the implementation of article 24.

50. Technical support and resources are not assigned according to the specific needs of individuals, but rather to schools, and there is limited flexibility for reassigning them. This has a serious impact on resource management. Although demand for assistive devices is periodically reviewed, they are kept at the school even after the student has left. Once funds

are allocated to a school, they cannot be reassigned. As a result, students with disabilities cannot attend the school closest to where they live but must study at the place where the necessary assistive devices are available. Several instances were observed of students with disabilities being educated in remote and segregated environments, where the education they received was of poor quality.

51. While there are differences between the Autonomous Communities, the persons interviewed during the visit emphasized the general lack of human resources:

(a) Teachers/tutors: lack of training in inclusive education and the rights of persons with disabilities, and teachers' prejudices about inclusive education being "the fashionable teaching methodology". The online training available nationwide, while free, is not mandatory, and there are no incentives to complete it. Some of those interviewed stressed that they felt "abandoned", having received no guidelines;

(b) Personal assistance and support: the families of students with disabilities usually have to identify and pay for support, which is provided through private services or organizations and incurs additional and often high costs. Support for extracurricular activities is often subcontracted to external associations. There have been reports of cases in which a student's personal assistant was unable to gain access to the classroom because he or she was not employed by the public authorities. Such situations reveal the lack of understanding of the reasonable accommodation that a person with disabilities might require in order to enjoy the right to equal access to education;

(c) Specialized teachers: these are assigned to one or more schools, and are unable to ensure that the student receives the necessary support. As each school has a fixed allocation of resources, this has an impact on each school's ability to receive students. Schools decide how to distribute their resources. The planning is based on the needs of different schools, there is a shortage of staff, and the timetable of each specialist is set in advance, without taking into account the specific requirements of each pupil.

52. The Committee also noted that the rationalization of public spending prompted by the economic crisis had led to the assignment of a greater number of students per assistant (in some cases up to seven children more than the number stipulated by law), as well as a reduction in the number of professional staff available to correctly identify the requirements of students with disabilities, and in the number of replacement teachers and specialized personnel. The capacity to meet the needs of students with disabilities has diminished, since they only receive qualified support a few hours per week, depending on the availability or willingness of teaching staff. In many cases, there is a marked discrepancy between the support designated in the assessment process and the support actually provided. In some cases, the schools to which persons with disabilities are sent do not even have the resources to meet their needs. The rationalization of spending has also led to resources being centralized in special schools.

53. The Committee observed the work done by associations to promote access to educational services through financing and support. Some of these associations perform functions delegated to them by the State party or receive subsidies and public funds. In some Autonomous Communities there are associations that have a wealth of experience in educating students with disabilities. However, the Committee notes that they usually operate in segregated systems and that support from associations is sometimes only available to families that can pay for it.

E. Provision and regime of reasonable accommodation for children with disabilities in mainstream schools

54. The Committee notes that the education system does not organize the provision of accommodation and equipment on the basis of pupils' individual requirements, but rather on the basis of whether there is a predetermined number of pupils at the school who have "special educational needs". It also notes the general lack of understanding of the fact that denying reasonable accommodation constitutes discrimination, and that the duty to provide reasonable accommodation is immediately applicable and not subject to gradual

implementation. The "curriculum adjustments" that are currently being made create a parallel education system in which students do not obtain the school leaving certificate. In cases where students require reasonable accommodation in the form of personalized support, this is only provided if a minimum number of students require similar support. The shortfalls in the support network hinder the provision of an inclusive and quality education. The assistive devices required by students with disabilities are not available in all circumstances, which greatly weakens their intended impact.

55. Personalized support is not always available when a student arrives at a school and the support offered to them is determined on the basis of categories of disability, with no flexibility. For example, sign language would be offered only to persons with hearing disabilities, but not to persons with other types of disabilities such as intellectual disabilities, cerebral palsy or autism spectrum disorders, who might also benefit from using it and for whom, in certain individual cases, it could constitute reasonable accommodation.

F. Regime governing the accessibility of mainstream schools

56. Royal Decree No. 132/2010 of 12 February 2010 establishes the minimum accessibility requirements for schools that provide education to children in the second cycle of preschool, primary school and secondary school. The Committee notes that the efforts undertaken to implement accessibility are still insufficient to guarantee these minimum requirements in schools. The quality and accessibility of facilities varied greatly among the establishments visited. Where physical accessibility had been successfully provided, shortcomings were seen in the accessibility of communication tools, assessments and educational content. It is not part of the legal mandate of the education inspector to analyse the implementation of the school accessibility legislation.

57. School grounds, cafeterias, sports fields and artistic facilities, school trips, camps and extracurricular activities are not generally accessible and are therefore not inclusive. The Committee repeatedly heard that children with disabilities received less attention. One non-disabled teenager also pointed out that there were no extracurricular activities open to her class "because there are children with disabilities in the class who can't do them, so they are cancelled for everyone". This notion feeds negative perceptions and stereotypes about persons with disabilities.

58. The Committee notes the assessment system's overall lack of accessibility. Students with disabilities following an adapted curriculum usually do not obtain the same qualifications or educational certificates as other students. Those who wish to obtain the secondary education certificate, which is required for access to higher education, including university, can only do so by sitting external tests. No adjustments to the standard compulsory and higher education exams are offered to accommodate individual needs. The only exception was found at the National University of Distance Education, which has implemented measures such as extending the time available to students for taking exams, organizing home testing, and permitting the use of audio materials.

G. Application of the "best interests of the child" standard in the education system and the impact of existing laws and measures regarding the right to education on the physical and psychological integrity of children with disabilities

59. The Committee notes that there is no clear understanding of the best interests of the child in inclusive education. Generally speaking, the medical approach to disability is still prevalent and thus the education authorities continue to consider that it is in the best interests of a child with a disability to gain access to "special education" in "special schools". Following this reasoning, a child with disabilities is not considered a subject of law; nor is his or her opinion taken into account. The Committee observed cases of children being made to change school every year, while others divided their week between two different schools a long way from their homes, and sometimes at opposite ends of a city. In

such cases, little consideration is given to the impact that the absence of a familiar support worker, group or school can have on the child.

H. Opportunities for children with disabilities to express their opinions on issues related to their education, and the attention paid to their opinions

60. The Committee notes that a child with disabilities is not usually listened to, including during the assessment to determine reasonable accommodations. The child is observed in the classroom during the assessment, but not asked questions. The assessors interviewed insisted that they always listen to children. However, according to the information collected, when children express an interest in something other than what has been proposed, their opinions are rarely taken into account, and their disabilities are used as a justification for the administration's position.

I. The quality of education available to persons with disabilities, particularly children, who are sent to special schools or units, as well as the quality of education in mainstream schools, including the curriculum, teaching methods and the medium and format of educational materials; awareness-raising and training for students, teachers and other school staff on the rights of persons with disabilities

61. The perpetuation of two education systems (mainstream schools and special schools or units) creates two parallel streams of schooling, work and, later, residential arrangements. The Committee noted on repeated occasions that inclusive education is clearly guaranteed in mainstream schools except at the stage where qualifications are awarded. In the rare cases in which pupils with intellectual, psychosocial or multiple disabilities manage to finish compulsory secondary education, they do not reach baccalaureate level, let alone university level. In most cases, they finish their education on vocational training courses.

62. The Committee observed some encouraging initiatives in which teaching and learning materials were adapted so that all students could learn and interact on the same subjects. However, in other cases, the activities proposed to children with disabilities were not suitable to their age and maturity. Overall, there was no evidence of a personalized education plan for each student with specific developmental and learning objectives. The notion of inclusiveness was missing from educational plans.

63. According to the information gathered, there are no indicators or estimates of the number of children with disabilities who have moved from the special system to the mainstream system, and on to the open job market. The common perception is that "the social and health-related needs of a student take precedence over their educational needs". Special schools frequently present themselves as "already inclusive" for pupils with "serious disabilities".

64. In general, stereotypes about persons with disabilities persist in society, including in educational settings. In some cases, they develop into complete rejection and hostility. This being the case, parents of children with disabilities told the Committee that their children were "more susceptible to accidents" and that they were subject to violence and bullying in ordinary schools. The Committee noted the perception that pupils with disabilities, especially girls, were more "sheltered" from such violence in special schools. The Committee also received reports of parents of non-disabled children stopping their children from attending secondary school until a child with disabilities had been taken out of the class, arguing that this child was holding the class back. These discriminatory practices have not been countered by the adoption and implementation of awareness-raising campaigns, informative activities and training programmes on the rights of persons with disabilities aimed at all members of society, beginning with teaching staff, education authorities and parents of non-disabled children.

J. Support for the parents of children with disabilities

65. The financial, material, emotional and respite support provided to the families of children with disabilities has diminished. Parents who decide to fight for a pupil with disabilities to gain access to inclusive education quickly become highly stressed, exhausted and even desperate. Although they receive support from other parents (through support groups), organizations and specialized networks, such support is limited and inadequate.

K. Inclusive education and its impact on social inclusion

66. The Committee observed that students with disabilities have few opportunities to exercise their right to participation and social inclusion once they reach 21 years of age, when compulsory education is over. The options open to these pupils, particularly those who have the greatest need for support, frequently involve segregation; they include attending sheltered workshops or activity centres, staying at home or attending day centres for persons with disabilities aged between 17 and 70. The Committee noted that among the professionals interviewed there was a common perception that long-term institutional care was the only possible future for some persons with disabilities once they reached adulthood.

67. The Committee notes that pupils who follow the curriculum of a special school, special class or combined education establishment do not receive the same qualification as their peers, but rather a certificate that enables them to work or access segregated vocational training for persons with disabilities. The Committee has also received reports that pupils do not have access to the educational programmes available to non-disabled adults. Programmes in special schools do not give students access to an adapted curriculum with reasonable accommodation and recognition of individual progress, but rather seek to prepare them to attend sheltered workshops.

68. The Committee noted that many of the parents interviewed saw a sheltered workshop as the best-case scenario because the authorities had told them "not to get their hopes up" and that their children "might stay at home for the rest of their life". These sheltered workshops are not designed to provide a transition to the open labour market and there are no strategies for facilitating the social inclusion and workplace integration of pupils with disabilities. The education authorities do not systematically consult persons with disabilities before making them participate in such programmes. In addition, public sector workers with disabilities still require a regular medical assessment confirming their capacity to work, whereas this is not required of non-disabled persons and it is never used as a basis for providing reasonable accommodation.

L. Domestic case law relating to the right to education of persons with disabilities

69. The rulings on inclusive education handed down by the Constitutional Court, the highest judicial body, demonstrate a lack of knowledge about the meaning and purpose of the principles of the Convention in relation to inclusive education.

70. On 27 January 2014, the Constitutional Court, ruling on *amparo* application No. 6868/2012, recognized inclusive education as a principle but not a right. It rejected the appeal of the parents of a boy with disabilities who opposed his inclusion in a special school, holding that once an education authority finds that it is in a child's interests to be educated in a special school, it is not necessary to conduct an assessment to determine whether the accommodations required could be provided in a mainstream school. The Court held that, in view of the pupil's serious disability and his need for individual care, his particular educational needs would be better met in a special school than in the mainstream education system.

71. The Court concluded that the involuntary segregation of a child with disabilities was legal in the current system, that it did not constitute discrimination, and that it was in the child's best interests.

72. The Committee noted that several lower courts had recognized educational exclusion as discrimination in specific cases and had ruled, for example, that failure to exhaust "all possibilities for the pupil's inclusion" constituted a violation of the right to equal treatment (Constitution, art. 14) in relation to the right to education (art. 27).

73. In another case concerning the decision to enrol a 10-year-old autistic child in the special education system, the High Court of Justice of Catalonia held that the administration's assessments had focused on highlighting the difficulties of integrating the pupil in a mainstream classroom, without examining whether accommodations were possible. The Court concluded that there had been a violation of the right to equal treatment in the exercise of the right to education. The Committee notes that, although the courts have invoked the Convention as a legal basis in several judgments, a lack of awareness of the standards of the Convention prevails, as the Constitutional Court's decision shows.

VIII. Conclusions and recommendations

74. **The Committee notes that, although the available statistics indicate a high level of educational inclusion of persons with disabilities, a structural pattern of discriminatory exclusion and educational segregation on grounds of disability has been perpetuated, by means of a medical model, which disproportionately and particularly affects persons with intellectual and psychosocial disabilities and persons with multiple disabilities.**

75. **The Committee notes that in the Spanish education system there is no widespread recognition of the human rights model of disability and there is a lack of access to quality and inclusive education for persons with disabilities. Inclusion is understood by a large majority of teachers as a principle, trend or pedagogical method rather than as a right. The Committee notes the scale and severity of the impact of this lack of access to inclusive education throughout the lives of persons with disabilities who have been segregated and who, on account of their disability, are placed in a parallel education system made up of special schools or special classes within mainstream schools.**

76. **Such practices are maintained despite being contrary to the Convention and they perpetuate a discriminatory system of segregation of persons with disabilities. One effect of the existing system is that it renders persons with disabilities invisible, leaving them outside the mainstream system, identifying them from their earliest years as "persons who cannot achieve what others achieve". Their educational trajectory locks them into a primarily rehabilitative medical system, which limits or blocks their access to the tools they need to live independently in the community and play a role in society and the labour market.**

77. **The findings of the inquiry reveal the inadequacy of the measures taken to promote inclusive education for persons with disabilities, and the lack of predictability of the system for promoting and protecting the rights of persons with disabilities. The Committee was constantly reminded that the competent authorities are unclear about the right to quality and inclusive education.**

78. **Some encouraging administrative and judicial decisions have been taken and some programmes have yielded positive results. However, these isolated programmes and decisions are dependent on the initiatives or sensitivities of individuals and, as such, they are not taken or carried out systematically. The Committee emphasizes that excluding persons with disabilities from the mainstream education system continues to cause them and their families a high level of frustration, isolation and suffering, affecting all areas of their lives. The Committee considers that this disability-based discrimination has significant implications for personal development, independent living and the ability of persons with disabilities to participate and be included in the community on an equal footing with others.**

79. **Given the number, continuing nature and diversity of violations found and the fact that they are interlinked on a permanent and continuous basis, and taking into**

account that such violations result in large part from the system established by legislation, policies and institutional practices, the Committee concludes that the findings of the present inquiry are reliable and indicate grave or systematic violations within the meaning of article 6 of the Optional Protocol and rule 83 of the Committee's rules of procedure. The Committee considers that the systematic denial of equal rights for persons with disabilities may take place either deliberately, namely with the State party's intent to commit such acts, or as a result of discriminatory laws or policies, with or without such intent.

80. **The Committee considers that a comprehensive analysis of the issue at the national level and at the level of each Autonomous Community would address many of the violations highlighted in the report and could be used as the basis for devising a national action plan in collaboration with the persons and institutions concerned.**

81. **In accordance with its jurisprudence and its general comment No. 4, the Committee recalls that an inclusive system based on the right to non-discrimination and equal opportunities requires the abolition of the separate education system for students with disabilities. An inclusive education system should provide education to all students according to a model of quality education that gives each student the support they need. In order to achieve inclusive education in practice, resources from special schools need to be transferred to the mainstream education system in order to allow pupils with disabilities to access education on an equal footing with other students, bearing in mind that non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation, and should be understood as a duty to provide accessible school environments and reasonable accommodations. The Committee, recalling its previous concluding observations (CRPD/C/ESP/CO/1), hereby makes a number of recommendations to the State party to be read in conjunction with general comment No. 4 (2016).**

A. Institutional and legal framework

82. **The Committee urges the State party to:**

(a) **Ensure that the Convention is accorded the status in domestic law that it enjoys under article 96 (1) of the Constitution, and that it indeed constitutes, in accordance with article 10 (2) of the Constitution, a mandatory element in the interpretation of legal provisions relating to the basic rights of persons with disabilities;**

(b) **Finalize, without delay and within a fixed time frame, the alignment of its legislation with the Convention, as required by Act No. 26/2011.**

B. Right to education

83. **With regard to article 24 in particular, the Committee recommends legislative reform in relation to the Convention in order to, inter alia:**

(a) **Clearly define inclusion and its specific objectives at each educational level;**

(b) **Envisage inclusive education as a right, not just a principle, and grant all students with disabilities, regardless of their personal characteristics, the right to access inclusive learning opportunities in the mainstream education system, with access to support services as required;**

(c) **Eliminate the exception for segregated education in legislation on education, including the associated psychological/educational assessment and schooling decision;**

(d) **Include a non-rejection clause for students on grounds of disability, clearly indicating that the denial of reasonable accommodation constitutes discrimination;**

(e) Eliminate the educational segregation of students with disabilities in both special schools and units within schools;

(f) Guarantee to persons with disabilities the right to be heard, and take account of their views through effective consultations with organizations representing them, while incorporating an age and gender perspective;

(g) Adopt the regulatory framework necessary for the effective implementation of legislation and the harmonization of the education system with the Convention at all levels, including in areas such as the development of new training programmes for all teachers, the availability of school materials accessible to all, the transformation of existing educational settings into inclusive and accessible spaces, the transfer of resources from segregated to inclusive environments, and the provision of adequate support to students who need it.

84. **Taking into account the distribution of responsibilities for educational matters in the Autonomous Communities, the Committee urges the State party to:**

(a) Establish effective monitoring and review mechanisms to ensure that legislation, strategies and policies relating to the application of article 24 comply with the State party's obligations throughout its territory;

(b) Ensure that the education authorities of the Autonomous Communities are informed of their responsibilities regarding the rights of persons with disabilities, and to that end:

(i) Promote legislative and budgetary actions and measures to guarantee the right to inclusive education in terms that are consistent with the Convention;

(ii) Ensure that students with disabilities gain admission to the mainstream education system on an equal footing with others, without this being contingent on the funds or means currently available to them;

(iii) Take the necessary practical steps, including the adoption of an education sector plan backed by adequate human and financial resources, to remove all financial and structural obstacles, and support the process of instituting an inclusive education system with a starting point, timetable, measurable goals and monitoring and corrective measures;

(iv) Adopt measures for mandatory continuing vocational education and training, to prepare teachers to work in inclusive educational environments, including good practices for responding to the individual needs of pupils;

(v) Guarantee support and resources for teachers, support staff and other education system personnel;

(c) Raise awareness and introduce measures to combat discrimination, stereotypes, prejudices and harmful practices, including bullying, directed at persons with disabilities, and develop effective responses that foster an attitude of respect for their rights;

(d) Speed up the processing and enhance the accessibility of complaints and legal remedies in cases of discrimination based on disability, increasing awareness of the standards of the Convention among members of the judicial system;

(e) Ensure that the parents of students with disabilities cannot be prosecuted for neglect if they demand that their children's right to inclusive education on an equal footing be respected;

(f) Develop personalized systems for assessing and monitoring progress, with reasonable accommodations;

(g) Improve the collection of disaggregated data and information, including the development of indicators in line with Sustainable Development Goal 4, in cooperation with organizations representing persons with disabilities.

85. **The Committee requests the State party to respond to the present report within the time limit prescribed by the Optional Protocol, to widely disseminate the Committee's conclusions and recommendations, and to provide adequate follow-up to the recommendations in the present report.**